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266 NLRB No. 7

D--9656
Cincinnati, OH

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ROBERT BATCHELOR d/b/a
BATCHELOR ELECTRIC CO.,
A SOLE PROPRIETORSHIP

and

Case 9--CA--13946

DANNY LOUX, an Individual

SUPPLEMENTAL DECISION AND ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, and Section 102.48 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding¹ in which it adopted the findings and conclusions of the Administrative Law Judge as contained in his Decision of August 28, 1980. The Administrative Law Judge's Decision found that Respondent violated Section 8(a)(1) of the Act by discharging Danny Loux for engaging in protected concerted activity and ordered Respondent to, inter alia, offer full reinstatement to Danny Loux and make him whole for any loss of earnings he may have suffered as a result of his discharge by payment to him of the amount he normally would have earned

¹ 254 NLRB 1145 (1981). Member Hunter notes that he was not a member of the panel that decided the case initially.

from the date of his discharge until the date of Respondent's offer of reinstatement, less net interim earnings, plus interest thereon, computed in accordance with Board precedent. On October 21, 1981, the United States Court of Appeals for the Sixth Circuit entered its consent judgment enforcing in full all of the backpay provisions of the Board's Order.² A controversy having arisen over the amount of backpay due under the Board's Order, the Regional Director for Region 9, on May 4, 1982, issued a backpay specification and notice of hearing, and, on May 6, 1982, an erratum alleging the amount of backpay due Loux. Respondent failed to file an answer to the backpay specification, and its allegations, therefore, stand uncontroverted.

On October 21, 1982, counsel for the General Counsel filed a Motion for Summary Judgment, with appendixes attached. Subsequently, on October 28, 1982, the Board issued an order transferring the proceeding to the Board and Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause and therefore the allegations of the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

² Respondent and the Board advised the court of their desire to dispose of this matter by entry of a judgment enforcing the Board's Order. The order was entered pursuant to that agreement.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.54(c) of the National Labor Relations Board Rules and Regulations, Series 8, as amended, provides in relevant part with respect to a backpay specification:

(c) Effect of failure to answer or to plead specifically and in detail to the specification. ---
If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without . . . notice to the respondent, find the specification to be true and enter such order as may be appropriate. . . .

In her Motion for Summary Judgment, counsel for the General Counsel asserts that the Regional Director's backpay specification and notice of hearing in this matter was duly served on the parties on May 4.³ Respondent's answer not having been received, counsel for the General Counsel sent letters by certified mail on September 27, 1982, to both Respondent and Respondent's attorney of record. In her letter to Respondent's attorney, she confirmed their September 24, 1982, telephone conversation during which she informed him that to date no answer to the backpay specification and notice of hearing had been filed; set a deadline of 10 days (October 10, 1982) for the receipt of any answer; and informed him that, if an answer was

³ Counsel for the General Counsel states that the specification was also served on the parties on September 28, 1982.

not filed by such date, a Motion for Summary Judgment would be filed with the Board. In her letter to Respondent, she confirmed her telephone message left with Respondent's answering service on September 24, 1982, informing it of the substance of her conversation with the attorney of record and reaffirming that if an answer was not received by October 10, 1982, a Motion for Summary Judgment would be filed with the Board. No answer to the backpay specification has been filed as of the date of the filing of the Motion for Summary Judgment. Respondent has not filed any response to the Notice To Show Cause.

No good cause for failure to file an answer having been shown, in accordance with the rules set above, the Board deems Respondent to have admitted all allegations of the backpay specification to be true and thus there are no matters in issue requiring a hearing. Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the basis of the backpay specification and the entire record in this case, the Board makes the following findings of fact:

We find that Danny Loux is entitled to be made whole under the Board's Order and the court's decree by payment to him of the amount summarized and calculated in the backpay specification: \$56,568.96, plus interest accrued to the date of payment, minus the tax withholdings required by Federal and state laws.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders

that the Respondent, Robert Batchelor d/b/a Batchelor Electric Co., a Sole Proprietorship, Cincinnati, Ohio, his agents, successors, and assigns, shall pay Danny Loux the sum of \$56,568.96. Interest thereon is to be computed in the manner prescribed in Isis Plumbing & Heating Co., 138 NLRB 716 (1962), and Florida Steel Corporation, 231 NLRB 651 (1977), minus the tax withholdings required by Federal and state laws.

Dated, Washington, D.C. January 17, 1983

Howard Jenkins, Jr., Member

Don A. Zimmerman, Member

Robert P. Hunter, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD